IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 666 of 2005

Date of Decision: 25-04-2005

JAGDISH KUMAR VARDARAM MEENA

Versus

AIRPORT AUTHORITY OF INDIA

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Petitioner: Mr.Rituraj Meena, Adv.

For Respondent-2: Mr.S.V.Raju, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Petitioner was a student of Final Year (B.E.) Engineering when he applied for the post of Junior Executive Trainee (Communication) pursuant to advertisement in Employment Newspaper dated August 23, 2003. He was given admit card, therefore, allowed to appear in the examination. He states that he cleared the written examination conducted by the Airport Authority of India (AAI), called for interview vide call letter dated 16.11.2004. It was kept at Mumbai on 13.12.2004 at 1:00 p.m. He left for Mumbai to appear in the interview and

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Whether reporters of Local Papers may be allowed to see the Judgment?

reached at the interview center but he was not allowed to appear before the interview panel for unclear and vague reasons which were not supplied to him on demand. He wrote to Director, AAI for the unjust treatment meted out to him but no reply has been received. Therefore, petitioner alleges that he is fully qualified for the post of Junior Executive Trainee (Communication) as per advertisement, therefore, refusal to appear in the interview is illegal and arbitrary. Allowing him to appear in the examination and disallowing him to appear in the interview breaches principle of estoppel and legitimate expectation. Action of respondents violates Article 14 of the Constitution of India also, therefore, direction is sought against respondents to take his interview.

#. Respondents interalia state that petitioner could not apply for the post since he did not hold degree in the engineering field mentioned in the advertisement. Holding of degree in engineering was required qualification. Substance of case put up by respondents is that the petitioner was not qualified for the post in question, therefore, he could not be interviewed.

#. Advertisement mentions 23.9.2003 last date for receipt of applications. It also mentions qualifications and experience for the post. Qualification of engineering degree from a recognized University/ Institute is mentioned. Therefore, it is implicit that on the date of applying for the post, candidate should possess engineering degree. Contention that advertisement does not mention that candidate should possess engineering degree on the last date of application cannot be accepted since possession of engineering degree is implicit in advertisement. Further, reliance on interview letter dated 16.11.2004 that candidate should fulfil requirement of qualification on the date of interview and petitioner had engineering degree on this date cannot be accepted. The crucial date is the last date as mentioned for receipt of applications in the advertisement and interview letter simply reiterates requirement of qualification necessary for permitting a candidate to appear in interview.

In State of Uttar Pradesh v. Vijay Kumar Misra (2002 AIR SCW 2608), applicant did not possess prescribed qualifications on the date of application. He acquired qualification subsequently. The Apex Court held that

such candidate does not come within the zone of consideration, therefore, cannot be considered for appointment in absence of any power in the appointing authority to relax qualification.

In Shankar K.Mandal and others v. State of Bihar and others (2003 AIR SCW 2980), it is held that cut off date with respect to eligibility requirement is either the one pointed out in the service rules, or in absence thereof, such date appointed for the purpose in the advertisement calling for applications, and in absence, the last date by which the applications were to be received by the competent authority. It is the last situation which is applicable in the present case.

In Bhupinderpal Singh and others v. State of Punjab and others (AIR 2000 SC 2011) the Apex Court said in paragraphs 13 and 15 that:

"13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar, (1997)4 JT (SC) 99; A.P.Public Service Commission v. B.Sarat Chandra, (1990)4 Serv LR 235 (SC); Dist. Collector and chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram v. M.Tripura Sundari Devi, (1990)4 Serv LR 237 (SC); Mrs.Rekha Chaturvedi v. University of Rajasthan, (1993)1 JT (SC) 220 : (1993 AIR SCW 1488 : 1993 Lab IC 1250); Dr.M.V.Nair v. Union of India, (1993)2 SCC 429 : (1993 AIR SCW 1412 : 1993 Lab IC 1111); and U.P. Public Service Commission, U.P., Allahabad v. Alpana, (1994) 1 JT (SC) 94 : (1994 AIR SCW 2861), the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the

jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.

... ...

15. It is clear from the facts of the case that not only the applicants, thousands in number, but the authorities too were also belabouring under an identical wrong impression. That is why the applications were entertained and the applicants called for interview though not eligible by reference to the last date for receipt of applications. The selection process is complete. Even the appointment letters have been issued. The controversy arose because several officers of the Education Department at the District level refused to join the selected candidates in spite of their being armed with appointment letters. Admittedly with a stray exception of one or two, all the applicants have acquired the requisite eligibility qualifications by 30-10-96, the extended date for making applications. From the corrigendum dated 17-10-96 it cannot be clearly spelled out that though the age requirement was to be determined by reference to 30-10-96, other eligibility requirements, i.e. those relating to education, were to be tested by reference to 15-2-96 and not 30-10-96. At least the corrigendum did not specifically say so. There are no malafides alleged. It has not been the case of anyone aggrieved and certainly not a finding arrived at by the High Court that satisfaction of eligibility requirement by reference to the last date of making of the applications was not rigorously insisted on by the authorities of Education Department or the Selection Board for the purpose of accommodating or obliging any favoured candidate or candidates. The enquiry set up pursuant to the orders of the High Court has also not brought out any finding enabling such an interference being drawn. The action on the part of the Selection Board and the authorities of the Education Department, though mistaken and unsustainable in law, was bona fide and a result of loose practice prevalent till then which has been discontinued now. In our opinion it would cause grave injustice to the several appellants before us if their selection and appointment were struck down and they were

> now asked to seek employment elsewhere. Most of them, if not all, must have crossed the upper age limit for seeking public employment and the ghost of unemployment is likely to chase them for the rest of their lives. It is not the case of the State Government that the entry of the several appellants before us as teachers in the Education Department, would be a disservice or cause any discontentment in the services or any other problem."

In M.A. Murthy v. State of Karnataka and others (AIR 2003 SC 3821), the Apex Court overruled the view taken by it laying down that "qualification acquired on the date of interview would be sufficient" holding the field at the time of selection. See also F.B. decision of this Court in Prakashkumar Prahladbhai Patel v. District Primary Education Officer (2000(3) GLH 676).

#. Contention that principle of estoppel is applicable against the respondents because petitioner was permitted to appear in the examination cannot be accepted. It seems to be a case of mistake committed at initial stage and corrected at a later stage. Therefore, principle of estoppel is not applicable to the facts of this case.

#. Consequently, there is no merit in this petition and the same is dismissed. Notice discharged.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)